

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

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U.S. PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ANDREW FRANSMAN and RENU CHIPALKATTI

Appeal No. 2005-0842
Application 09/204,523

ON BRIEF

Before OWENS, SAADAT and McDONALD, *Administrative Patent Judges*.
OWENS, *Administrative Patent Judge*.

DECISION ON APPEAL

This appeal is from the final rejection of claims 1-8, 17-25 and 27, which are all of the pending claims.

THE INVENTION

The appellants claim a master scheduler and method for controlling a near-video-on-demand system. Claim 1, which claims the master scheduler, is illustrative:

1. A master scheduler arranged to control a near-video-on-demand (NVOD) system, the master scheduler comprising:

a schedule management system arranged to receive and validate a schedule; and

a content manager system arranged to monitor and control the loading of assets into a video server according to the validated schedule, wherein the assets include video content scheduled for staggered transmission to subscribers of the NVOD system using a plurality of channels, the plurality of channels including a test channel dedicated solely for testing a selected asset,

wherein the content manager includes a graphical user interface configured to allow an administrator to view the selected asset using the test channel to verify the integrity of the selected asset loaded into the video server.

THE REFERENCES

Clark	5,383,112	Jan. 17, 1995
Davis et al. (Davis)	5,576,755	Nov. 19, 1996
Gardner et al. (Gardner)	5,583,995	Dec. 10, 1996
Ritchie, Jr. et al. (Ritchie)	5,790,523	Aug. 4, 1998
Nouri et al. (Nouri)	6,088,816	Jul. 11, 2000
		(filed Oct. 1, 1997)

THE REJECTIONS

The claims stand rejected as being unpatentable under 35 U.S.C. § 103 as follows: claims 1-3 over Clark in view of Nouri and Ritchie; claims 4-8 over Clark in view of Nouri, Ritchie and Gardner; claims 17 and 18 over Clark and Davis in view of Ritchie; claims 19 and 20 over Clark, Davis and Ritchie in view of Nouri; and claims 21-25 and 27 over Clark and Davis in view of Ritchie and Gardner.

OPINION

We reverse the aforementioned rejections. We need to address only the independent claims, i.e., claims 1, 17 and 21.

Claim 1

Claim 1 requires 1) a content manager system arranged to monitor and control the loading of assets into a video server, wherein the assets include video content scheduled for staggered transmission to subscribers of a near-video-on-demand (NVOD) system, 2) a plurality of channels including a test channel dedicated solely for testing a selected asset, and 3) a graphical interface, included in the content manager, that is configured to allow an administrator to view the selected asset using the test channel to verify the integrity of the selected asset loaded into the video server.

Clark discloses (col. 2, line 68 - col. 3, line 13):

a method of managing exhibitions of predetermined performances that are recorded on recording media. The method calls for scheduling exhibitions of the performances to occur at predetermined times and on predetermined channels. The method then creates a master data structure which identifies, for each channel and each performance throughout a predetermined interval, specific media copies to be transmitted over specific channels at specific times. The method calculates, for each of the individual performances, the number of media copies that are needed to accommodate the schedule. A video server is controlled to play the specific media copies in accordance with the master data structure.

The schedule can provide staggered timing of a single program on multiple channels so as to allow subscribers to have access to desired video nearly on demand (col. 5, lines 20-23).

The examiner argues that "Clark unequivocally teaches a test channel for testing a selected asset, where the asset include[s] video content scheduled for staggered transmission to subscribers of a NVOD system, see col. 4, lines 36-67 & col. 5, lines 10-24" (answer, page 10). The portion of Clark relied upon by the examiner discloses that a serving computer monitors the status of video players, and a status screen indicates whether a video playback machine is playing, rewinding, waiting to start playing, not in use, setting up, or has failed. Clark's video players play video content, but the video players themselves are not video content. Thus, even if Clark's monitoring is considered to

be testing, Clark tests the video server rather than testing an asset that has been loaded into the video server as required by the appellants' claim 1.

Nouri discloses a fault tolerant system that includes Recovery Manager software that allows users to manage, diagnose and restore service to a server system quickly, through a graphical user interface, in the event of a failure (abstract; col. 6, lines 57-60).

The examiner argues (answer, pages 4-5):

Nouri discloses a means for an operator to view the status or condition of various assets at a server, (Abstract, lines 1-4; col. 3, lines 45-65; col. 6, lines 51-67). It would have been obvious for one of ordinary skill in the art at the time the invention was made, to modify Clark, with the disclosure of Nouri, providing operators with a visual/graphical display of the status of various components of the server, at least for the desirable improvement of enabling the operator to more readily and efficiently adjust parameters of the system.

As discussed above, the examiner has not established that Clark discloses, or would have fairly suggested to one of ordinary skill in the art, testing an asset that has been loaded into a video server. Hence, the examiner has not established that even if one of ordinary skill in the art were to combine Clark's disclosure with Nouri's disclosure of using a graphical user interface in managing, diagnosing and restoring service to a

server system, that person would arrive at the appellants' claimed invention.

Ritchie discloses a test facility for a system for communicating telephony signals, and other or similar signals, over cable or community antenna television (CATV) and equivalent communications networks (col. 1, lines 20-25).

The examiner argues (answer, page 5):

Regarding the amended claim feature wherein the test channel is solely dedicated for testing the selected asset, Clark & Nouri do not teach such a feature. Ritchie is directed to a testing facility for testing a plurality of different assets, i.e., upstream receiver modules (URM) 802 and downstream transmitter modules (DTM) 804, at a CATV headend interface unit, see col. 25, lines 62-67 thru col. 26, lines 1-15 & col. 28, lines 52-60, and is therefore in the same field of endeavor as Clark & Nouri. In particular, Ritchie teaches that when testing the various modules, the test control module (TCM) 800, utilizes a particular RF test frequency, i.e., a channel which [is] only used for testing, see col. 26, lines 40-55 col. 27, lines 12-50; col. 34, lines 40-62 & col. 36, lines 25-30.

One of ordinary skill in the art would have readily recognized the benefit and it would have been obvious for one [of] ordinary skill in the art at the time the invention was made to modify the combination of Clark & Nouri with the teachings of Ritchie, wherein a particular channel is solely used for testing an asset, at least for the known purpose of conserving a certain portion of the bandwidth for distribution of the video to clients and to more efficiently utilize all available bandwidth.

The examiner further argues that Ritchie's "DTM 804 is the functional equivalent of the [i.e., Clark's] video player 17, since they are both used to transmit information to subscribers of the system" (answer, page 11).

Ritchie's upstream receiver modules and downstream transmitter modules which are tested are not assets that are loaded into a video server. As discussed above, the examiner has not established that Clark and Nouri disclose, or would have fairly suggested to one of ordinary skill in the art, testing assets that are loaded into a video server. Consequently, the examiner has not established that even if one of ordinary skill in the art were to combine Ritchie's disclosure of testing an upstream receiver module and a downstream transmitter module with the disclosures of Clark and Nouri, such a person would have arrived at the appellants' claimed invention.

For the above reasons we conclude that the examiner has not carried the burden of establishing a *prima facie* case of obviousness of the invention claimed in the appellants' claim 1. Accordingly, we reverse the rejection of that claim and claims 2-8 that depend directly or indirectly therefrom.¹

¹ The examiner does not rely upon Gardner for any disclosure that remedies the above-discussed deficiency in Clark, Nouri and Ritchie as to claim 1.

Claim 17

Claim 17 requires receiving assets including content, and loading the assets into a video server via a group of channels according to a finalized schedule, wherein at least one of the group of channels includes a test channel dedicated solely for testing purposes.

The examiner argues that Ritchie discloses an RF channel used solely for testing (answer, pages 6-7). Ritchie teaches that the carrier frequency assigned for testing downstream transmitter module 804 preferably is a frequency that has not been allocated for downstream communications between headend interface unit 301 and customer interface unit 301, and that "[t]hose skilled in the art, however, will appreciate that the test frequency does not necessarily need to be different from one of the 'on-line' downstream frequencies" (col. 36, lines 21-29).

The examiner, however, has not established that Ritchie discloses, or would have fairly suggested to one of ordinary skill in the art, a test channel that is included in a group of channels used to load assets into a video server as required by the appellants' claim 17. The examiner, therefore, has not established a *prima facie* case of obviousness of the invention

claimed in that claim.² Consequently we reverse the rejection of claim 17 and claims 18-20 that depend directly or indirectly therefrom.

Claim 21

Claim 21 requires loading an asset into a video server, and verifying an integrity of the asset via a test channel, wherein the test channel is dedicated solely for testing assets in the video server. The examiner does not argue that the applied references disclose this claim limitation or would have fairly suggested it to one of ordinary skill in the art (answer, pages 7-8 and 15). Hence, the examiner has not established a *prima facie* case of obviousness of the invention claimed in that claim. We therefore reverse the rejection of claim 21 and claims 22-25 and 27 that depend therefrom.

DECISION

The rejections under 35 U.S.C. § 103 of claims 1-3 over Clark in view of Nouri and Ritchie, claims 4-8 over Clark in view of Nouri, Ritchie and Gardner, claims 17 and 18 over Clark and Davis in view of Ritchie, claims 19 and 20 over Clark, Davis and

² The examiner does not rely upon Davis or Gardner for any disclosure that remedies the above-discussed deficiency in Ritchie.

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Ritchie in view of Nouri, and claims 21-25 and 27 over Clark and Davis in view of Ritchie and Gardner, are reversed.

REVERSED

Terry J. Owens)
TERRY J. OWENS)
Administrative Patent Judge)
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